

9. (Amended) An absorbent swimwear garment comprising:  
a chassis defining a waist opening and first and second leg openings,  
the chassis including a liquid-permeable body side liner, a partially liquid-permeable  
outer cover, and an absorbent assembly between the body side liner and the outer  
cover.

The total number of claims has decreased, and the number of independent claims has not changed. Therefore, no additional claim fee is due at this time.

#### REMARKS

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1-35 are pending.

The present invention is directed to a pant-like absorbent swimwear garment that prevents pre-swim urine leakage while allowing large amounts of excess water to be drained from the garment after swimming. A built-in draining mechanism in the garment uses semi-permeable gasketing materials or barrier materials, thereby enabling the absorbent garment to absorb urine without retaining excessive amounts of swim water, such as lake or pool water, after the wearer leaves the lake or pool. More particularly, a portion or all of the gasketing or barrier system is permeable to swim water at least under hydrostatic head conditions that exist in the garment when the wearer exits the water.

#### Amendment to the Claims

Applicants have canceled Claims 8 and 16, and have amended Claims 1 and 9 to include the limitations of Claims 8 and 16, respectively. More particularly, Claims 1 and 9 have been amended to include the limitation that the claimed garments are absorbent swimwear garments. No new matter has been added.

**Claim Rejections - 35 USC §103****A. Garcia in view of Yeo**

The rejection of Claims 1-7, 9-15, and 17-24 under 35 USC §103(a) as being unpatentable over Garcia (U.S. Patent No. 5,792,132) in view of Yeo (U.S. Patent No. 5,509,913) is respectfully traversed.

Garcia discloses an incontinence diaper with a drain that is provided to release urine from the garment into an attached reservoir while preventing bowel evacuations from leaving an interior area of the garment. It is an object of the invention of Garcia to provide an incontinence diaper system that is of a “durable and reliable construction” (Col. 2, lines 51-53). Yeo, on the other hand, discloses a flushable material that can be used to make a variety of flushable products.

Applicants’ invention, as claimed in independent Claims 1, 9, and 17, is directed to an absorbent swimwear garment that includes a selectively liquid-permeable or partially liquid-permeable outer cover, or an outer cover that is liquid-permeable in a crotch area. Neither Garcia nor Yeo discloses or suggests a swimwear garment including a selectively liquid-permeable or partially liquid-permeable outer cover, or an outer cover that is liquid-permeable in a crotch area.

There is no suggestion to combine the teachings of Garcia with the teachings of Yeo. In fact, Yeo teaches away from Garcia because Garcia is directed to a “durable” incontinence garment, whereas Yeo is directed to flushable products. Furthermore, a combination of the flushable material of Yeo with the incontinence diaper of Garcia does not result in a swimwear garment including a selectively liquid-permeable or partially liquid-permeable outer cover, or an outer cover that is liquid-permeable in a crotch area, because neither Garcia nor Yeo suggests swimwear, but instead would result in a flushable incontinence diaper having a drain that releases urine from the garment into an attached reservoir. More particularly, there is no suggestion in either Garcia or Yeo to include a type of liquid-permeable material in an outer cover that prevents the release of liquid under low pressure through the drain and allows the release of liquid under a higher pressure through the same drain.

For at least the reasons given above, Applicants respectfully submit that the teachings of Garcia in view of Yeo fail to disclose or suggest Applicants’

claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

**B. Garcia in view of Yeo in further view of Slingland**

The rejection of Claims 8 and 16 under 35 USC §103(a) as being unpatentable over Garcia in view of Yeo in further view of Slingland (U.S. Design Patent No. 377,980) is respectfully traversed.

Applicants have requested cancellation of Claims 8 and 16. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

**C. Garcia in view of Yeo in further view of Sauer**

The rejection of Claims 25-35 under 35 USC §103(a) as being unpatentable over Garcia in view of Yeo in further view of Sauer (U.S. Patent No. 5,674,213) is respectfully traversed.

As discussed above, neither Garcia nor Yeo, nor the combination thereof, discloses or suggests a swimwear garment including an outer cover that is liquid-permeable in the crotch area, as recited in independent Claim 17 from which Claims 25-35 depend.

Sauer discloses an absorbent article having containment flaps with passageways or openings near the base of the flaps that lead into a receiving reservoir. The reservoir receives urine, fecal material or other exudates. Sauer does not disclose or suggest an absorbent swimwear garment including an outer cover that is liquid-permeable in a crotch area, or having liquid-permeable containment flaps that allow water to drain from the garment. If the garment of Sauer were used as a swimwear garment, the reservoirs associated with the containment flaps would fill up with swim water once a wearer entered a pool or other swim area, thereby creating the opposite effect intended by Applicants' invention. In other words, Applicants' invention is used to prevent the accumulation of swim water in an absorbent garment, whereas Sauer includes reservoirs to contain the overflow of any exudates that originate within the garment but does not include any features that allow excess liquid to escape from the garment.

Furthermore, there is no suggestion to combine the teachings of Sauer with either Garcia or Yeo. Sauer discloses an absorbent garment having built-in reservoirs, Garcia discloses an incontinence diaper with a drain attached to a reservoir outside the diaper, and Yeo discloses a flushable material that can be used to make a variety of flushable products. Even if Garcia, Yeo, and Sauer were combined, a person skilled in the art would not come up with Applicants' invention because none of these references discloses or suggests an absorbent swimwear garment including an outer cover that is liquid-permeable in a crotch area, or having liquid-permeable containment flaps that allow water to drain from the garment

For at least the reasons given above, Applicants respectfully submit that the teachings of Garcia in view of Yeo in further view of Sauer fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

### **Double Patenting Rejection**

The provisional rejection of Claims 1-35 under the judicially created doctrine of obviousness-type double patenting over claims 1-40 of copending U.S. Application No. 09/698,346 and claims 1-29 of copending U.S. Application No. 09/749,253 is respectfully traversed.

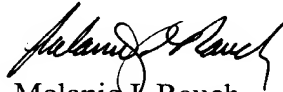
The present application and U.S. Application Nos. 09/698,346 and 09/749,253 are all pending. Allowable subject matter, notwithstanding the provisional obviousness-type double patenting rejection, has not been indicated in any of these applications. Where a provisional rejection under the judicially created doctrine of obviousness-type double patenting is made between two or more applications, M.P.E.P. §804(I)(B) states that "[i]f the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the 'provisional' double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent." It is not evident which of the pending applications will become

allowable first. Therefore, any action by Applicants with regard to this provisional rejection is premature.

**Conclusion**

Applicants believe that this case is now in condition for allowance. If the Examiner feels that any issues remain, then Applicants' undersigned attorney would like to discuss the case with the Examiner. The undersigned can be reached at (847) 490-1400.

Respectfully submitted,



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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

In the Claims:

Claims 8 and 16 have been canceled.

1. (Amended) An absorbent swimwear garment comprising:  
a chassis defining a waist opening and first and second leg openings,  
the chassis including a liquid-permeable body side liner, a selectively liquid-  
permeable outer cover, and an absorbent assembly between the body side liner and the  
outer cover.

9. (Amended) An absorbent swimwear garment comprising:  
a chassis defining a waist opening and first and second leg openings,  
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